

FARISH v. BEN M. HOGAN & COMPANY.

5-411 267 S. W. 2d 503

Opinion delivered May 3, 1954.

AUTOMOBILES—GUESTS—WILLFUL AND WANTON NEGLIGENCE—WEIGHT AND SUFFICIENCY OF EVIDENCE.—Evidence that driver of truck was either negligent in estimating the height of the A-frame in relation to superstructure of bridge, or that he simply forgot about the A-frame being on the truck, does not make out a case of willful and wanton negligence under Guest Statute.

Appeal from Perry Circuit Court; *Guy Amsler*, Judge; affirmed.

Charles L. Farish and *John G. Moore*, for appellant.

Mehaffy, Smith & Williams and *S. Hubert Mayes*, for appellee.

ROBINSON, J. Appellant J. D. Farish was injured while riding as a guest in a truck owned by Ben M. Hogan and Company and being operated by Hogan's employee, Fiezel. The court directed a verdict for the defendant on the theory there was no evidence of willful and wanton misconduct on the part of Hogan's driver which would sustain a verdict in favor of the appellant Farish.

Before a guest in an automobile can recover against the owner or operator, he must show that the automobile was being driven in a willful or wanton manner. Ark. Stats., § 75-915 and § 75-913. Here there is no evidence whatever of willfulness or wantonness on the part of the driver of the truck. For a full discussion of the terms "willful" and "wanton" see *Steward, Adm. v. Thomas*, 222 Ark. 849, 262 S. W. 2d 901.

The truck involved had an A-frame mounted on the rear extending upward for several feet. The mishap occurred when the driver, Fiezel, attempted to cross a bridge and the A-frame came in contact with the superstructure of the bridge. Undoubtedly there is evidence that Fiezel was negligent; he was either negligent in estimating the height of the A-frame in relation to the upper portion of the bridge, or he simply forgot about

the A-frame being on the truck; but there is no evidence that such negligence amounted to willful and wanton misconduct. In fact, the appellant Farish testified: "Q. There was nothing said, no warning given you by Mr. Fiezel? A. No, he thought it would go under there himself, I am satisfied, or he wouldn't have pulled under there." There is no evidence that the accident occurred from any other cause than that explained by the appellant, and his testimony does not make out a case of willful and wanton misconduct on the part of the driver of the truck.

The court was correct in directing the verdict, and the judgment is therefore affirmed.
